INJURY TO MINOR EMPLOYED IN VIOLATION OF LAW.

If a minor employed in violation of law, is injured, does he come under the Compensation Law or are his rights determined by the common law? The word "employee" as used in the Virginia Workmen's Compensation Act, is defined to "include a minor in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer".[1]

By the terms of the act "every contract of service between any employer and employee, covered by this act * * * shall be presumed to continue * * * and every such contract made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act", in the absence of notice on the part of employer.[2]

We must consider then, whether the words "under any contract" are subject to limitation.

In Section 6 we find the words "every contract of service * * * covered by this act" which immediately puts one upon inquiry as to what contracts of service are not covered. From section 9 of the Compensation Act, it appears that the Act does not apply to employees of common carriers engaged in *inter-* or *intra*-state commerce, and gives as the reason the existence of Federal and State statutes covering these.

From this it may be gathered that the Workmen's Compensation Law supplements but does not supersede any statute law.

At common law there were no restrictions on child labor. Only by statute was the use of this labor curtailed. Since the common law remains in full force except as it is or shall be altered by the General Assembly,[3] the situation otherwise remains unchanged. The reciprocal duties of master and servant are unaffected.

It would seem, therefore, that "contract of service" as used in the Act, refers to *a legal contract of service,* for, as stated

1. Chapter 400, Acts of 1918 Amended—Sect. 2b.
2. Idem. Sec. 6.
3. Code 1919, Sect. 2.

in Hetzel *v.* Wasson Piston Ring Co., 89 N. J. L. 202, 98 Atl. 308, L. R. A. 1917D, 75:

> "It can hardly be doubted that the Legislature, in providing for the ingrafting of these statutory provisions on contracts of hiring, had in mind contracts which were valid in law, or, at least, contracts the making of which was not prohibited by express legislative enactment; for it would be entirely unreasonable to attribute to the legislature the intention of adding terms to a contract of hiring which it had already prohibited the parties from making."

So if he may not lawfully be employed, he cannot be regarded as an employee, within the provisions of a Compensation Act;[4] there must be a valid contractural relation, for a contract that is illegal or in violation of a statute will not suffice.[5]

Any neglect or violation of statutory duty by an employer is actionable negligence, and assumption of risk is the result of a contract of employment, and, as the employer cannot legally contract to violate a statute, the servant does not assume the risk due to the omission of a statutory duty on the part of the employer.[6]

In the event, then, of injury to a child employed in violation of the law, such injury would not be within the Compensation Act, and the master would be liable at common law, and the defense of assumption of risk would not be available.

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4. Hetzel *v.* Wasson Piston Ring Co., 89 N. J. L. 202, 98 Atl. 308, L. R. A. 1917D, 75; Hillestad *v.* Industrial Ins. Commission, 80 Wash. 426, 141 Pac. 913, Ann. Cas. 1916B, 789; Stetz *v.* Mayer Boot, etc., Co., 163 Wis. 151, 156 N. W. 971, Ann. Cas. 1918B, 675.

5. Kruczkowski *v.* Polonia Pub. Co., 168 N. W. Rep. 932, 2 W. C. L. J. 913, 916.

6. Sipes *v.* Michigan Starch C., 137 Mich. 258, 100 N. W. 447; Sterling *v.* Union Carbide Co., 142 Mich. 284, 105 N. W. 755; Murphy *v.* Grand Rapids Veneer Works, 142 Mich. 677, 106 N. W. 211; Swick *v.* Etna Portland Cement Co., 147 Mich. 454, 111 N. W. 110.